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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,520	08/10/2000	Thomas Michael Walley	10001892-1	7579

22878 7590 11/02/2005

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EXAMINER	
PERUNGAVOOR, SATHYANARAYA V	
ART UNIT	**PAPER NUMBER**
2625	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/637,520	Applicant(s) WALLEY ET AL.	
	Examiner Sath V. Perungavoor	Art Unit 2625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
 a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

 NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: *1 and 3-21*.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Sath V Perungavoor
Examiner
Art Unit: 2625

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that the Examiner misapplied MPEP 2129 and used the incorporation by reference as admission of prior art against the claims. Examiner respectfully disagrees. As stated in page 6, paragraph 1 of the final office action (mailed on: 8/19/2005), this citation was intended only to provide support for same problem solving area criterion for the Blalock reference. However, it can be glaringly seen that the claims were rejected properly with a motivation to combine that was not dervied from the applicants' disclosure, see page 8, paragraph 3. Applicants further argue Blalock reference is neither in the same field of endeavor nor in the same problem solving area and there is no motivation to combine. Examiner respectfully disagrees. In response to applicants' argument that Blalock is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Blalock is in the same problem solving area, the detection of movement/navigation. Raynal discloses a detection of movement through a mouse and Blalock performs the same movement detection through the use of image correlation. In response to applicants' argument that there is no motivation to combine, it would be glaringly evident to those skilled in the art that the mechanical movement detection method of Raynal is inferior to that of Blalock's image correlation based movement detection. First, mechanical parts are inherently prone to wear and over time the accuracy of Raynal's movement detection would diminish. Second, mechanical parts would need frequent maintenance (i.e. calibration, lubrication or replacement (i.e. worn out) of the mouse), while Blalock's method would not require such maintenance. Applicants further argue that it would not be obvious to transition from NxM to 1xM as set forth in claim 17. Examiner respectfully disagrees. It is well established that 1xM would require less space, see Bohn at column 7, lines 20-34 and column 8 lines 30-53. In regards to claim 3, applicants argue that Bohn is not in the same field of endeavor or the same problem solving area. Examiner respectfully disagrees. In response to applicant's argument that Bohn is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bohn in the same problem solving area, placement of positioning and imaging sensors. In regards to claims 13, 14 and 16, applicants argue that claim limitations are not taught by the combination. Examiner respectfully disagrees. Examiner directs the applicants to Column 2 Lines 17-20 and 62-67 of the Akizuki reference, where the claim limitations are glaringly shown. In regards to claim 6-8, applicants argue that claim limitations are not taught by the combination. Examiner respectfully disagrees. Examiner directs the applicants to Column 3 Lines 31-37 and 48-50, Column 4 Lines 7-14 and Figures 1 and 2 of the Raynal reference, where the claim limitations are glaringly shown.

KANJIBHAI PATEL
PRIMARY EXAMINER